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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Claudia Wilken, Judge

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. CR 12-00407-CW
	)	CR 20-00074-CW
LANCE GREEN,	)	
	)	
Defendant.	)	
	)	

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Oakland, California  
Tuesday, June 16, 2020

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

OFFICE OF THE UNITED STATES ATTORNEY  
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San Francisco, California 94102  
BY: **STEPHEN MEYER**  
**ASSISTANT UNITED STATES ATTORNEY**

OFFICE OF THE UNITED STATES ATTORNEY  
1301 Clay Street  
Oakland, CA 94612  
BY: **LEAH PAISNER**  
**ASSISTANT UNITED STATES ATTORNEY**

For Defendant:

LAW OFFICES OF CHARLES J.S. WOODSON  
725 Washington Street, Suite 312  
Oakland, CA 94607  
BY: **CHARLES J.S. WOODSON, ESQUIRE**

Also Present:

**KAREN MAR,**  
**UNITED STATES PROBATION**

Reported By: Pamela Batalo-Hebel, CSR No. 3953, RMR, FCRR  
Official Reporter

1 Tuesday - June 16, 2020

1:33 P.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** We are now calling related criminal cases  
5 CR 12-407-CW-3 and CR 20-074-CW, United States vs. Lance Green.

6 Counsel, please state your appearances for the record.

7 **MS. PAISNER:** Good afternoon, Your Honor. This is  
8 Leah Paisner appearing on behalf of the United States.9 **MR. WOODSON:** Good afternoon, Your Honor. Charles  
10 Woodson on behalf of Lance Green, who is on the telephone and  
11 in custody at Santa Rita jail.12 **THE COURT:** Mr. Green, are you on the line?13 **THE DEFENDANT:** Yes, Your Honor.14 **THE COURT:** Okay.15 **THE PROBATION OFFICER:** And good afternoon --16 **MR. MEYER:** Good afternoon, Your Honor. This is  
17 Stephen Meyer, also representing the United States.18 **THE COURT:** And who do we have from Probation?19 **THE PROBATION OFFICER:** Your Honor, this is Karen Mar  
20 from Probation.21 **THE COURT:** And the court reporter is?22 **THE COURT REPORTER:** Good afternoon, Your Honor. This  
23 is Pam Hebel, court reporter.24 **THE COURT:** First I would like to make sure that the  
25 Defendant, Mr. Green, can hear us. I know we have Mr. Green,

1 Sr., on the line, too, so when I say "Mr. Green," I mean the  
2 Defendant, Mr. Green.

3 You can hear us?

4 **THE DEFENDANT:** Yes, ma'am.

5 **THE COURT:** If at some point you can't hear us  
6 anymore, say something.

7 **THE DEFENDANT:** Okay.

8 **THE COURT:** And keep talking until someone can fix it.  
9 Not only do you need to mute your phone, but anyone whose phone  
10 is not muted at any point needs to not be on a speaker phone;  
11 otherwise, we can hear your papers rustling, and it makes it  
12 hard to hear what is going on.

13 So, Mr. Green, you have the right to have a sentencing in  
14 person. Your attorney has indicated that you consent to  
15 proceed by telephone. I know it's not ideal, but it's a lot  
16 quicker, so I take it you are prepared to go forward today  
17 by -- on a telephonic hearing rather than waiting for when we  
18 might be able to provide an in-person hearing; am I right?

19 **THE DEFENDANT:** Correct.

20 **THE COURT:** Okay. We have made this telephonic  
21 hearing accessible to the public by providing the AT&T phone  
22 number and access number on the calendar, so any family  
23 members, members of the public, press, etc., could listen in,  
24 if they wanted to do so.

25 However, everyone needs to know that there is still a

1 prohibition against recording and rebroadcasting any such  
2 proceedings. So you are not allowed to do that, and if you  
3 were to do that, sanctions would be imposed.

4 I have to make a couple of independent findings with  
5 respect to the CARES Act, and that is that pursuant to that act  
6 and General Order 74 of this court, because of the pandemic  
7 emergency of COVID-19, that we can't conduct all of our  
8 criminal hearings in person without seriously jeopardizing  
9 public health and safety, and, thus, we have resorted to these  
10 telephonic remote hearings that we are undertaking.

11 We could, as I mentioned, delay this proceeding, but that,  
12 too, would harm the interests of justice because it could cause  
13 additional delay and result in the Defendant being detained  
14 longer than otherwise necessary.

15 We are not able to hold this particular proceeding by  
16 video conference because our video conferencing facilities are  
17 of limited availability and difficult to arrange and would  
18 again result perhaps in a longer delay before these proceedings  
19 could take place.

20 So for those reasons, we're going to proceed as we are at  
21 the moment.

22 And I'm going to start by talking about the 2255 case  
23 which resulted in setting aside one of Mr. Green's prior  
24 convictions under which he was being charged with supervised  
25 release violations. And after some back and forth in the

1       briefs, I think that the upshot is that the most efficient and  
2       least complicated method of resolving that would be to simply  
3       set aside the conviction and sentence on Count 4 and leave in  
4       place the conviction and sentence on Count 3, which was 18  
5       months. There would be credit for time served, and the Court  
6       would find that the time has already been served. And it would  
7       be followed by three years of supervised release.

8           While one might -- another option might be to conduct a  
9       resentencing on the case as a whole, I think that the method  
10       that I've mentioned is the best way to do it, and I think that  
11       both sides are in agreement with that.

12       Are they not, Ms. Paisner?

13           **MS. PAISNER:** Your Honor, I will let AUSA Myers speak  
14       to this issue as he is the one who briefed it. I believe that  
15       is correct.

16           **THE COURT:** Okay. Mr. Meyer?

17           **MR. MEYER:** Yes, Your Honor, that is correct.

18           **THE COURT:** And, Mr. Woodson, you're in agreement with  
19       that procedure?

20           **MR. WOODSON:** Yes, Your Honor.

21           **THE COURT:** Okay. So we will simply issue an amended  
22       judgment to that effect, and it doesn't -- and then we'll  
23       proceed to the new offense and the supervised release violation  
24       which -- the latter of which, of course, is premised on the  
25       original offense.

1           On the new charge, we have a plea agreement. It indicates  
2 that the Offense Level is 17. It doesn't take a position on  
3 the Criminal History, and provides for a low-end sentence.  
4 Probation says the Criminal History is IV, and with an Offense  
5 Level of 17 would lead to a Guideline range of 37 to 46 months,  
6 of which Probation recommends a sentence of 41 months.

7           The Government is in agreement with the Guideline  
8 calculation, but recommends a sentence of 37 months on the new  
9 offense, plus -- well, and then later we'll see that they  
10 recommend also a 12-month sentence on the new offense, and they  
11 recommend that that run concurrent.

12           The Defendant, while not disagreeing with those Guideline  
13 calculations, is requesting a home confinement sentence,  
14 largely on account of his condition of diabetes and the  
15 conditions of coronavirus infection at the Santa Rita jail as  
16 well as to any federal prisons to which he might be  
17 transferred.

18           And then we have the supervised release violation which is  
19 based on the same conduct as the new charge. The grade of that  
20 offense is a B, and the Criminal History is a IV, which would  
21 lead to a Guideline range of 12 to 18 months, and Probation is  
22 recommending -- I guess I said -- well, strike that. Probation  
23 is recommending what? Twelve months consecutive on the  
24 supervised release violation?

25           **THE PROBATION OFFICER:** Yes, Your Honor.

1                   **THE COURT:** And the Government, as I mentioned  
2 earlier, is recommending 12 months concurrent with the 37  
3 months that it recommends on the new offense. And Defendant  
4 again seeks, I guess, a time-served and home confinement  
5 sentence.

6                   I have a couple of questions. The Defendant represents  
7 that he has diabetes but says that it's Type 2 diabetes but  
8 says that he needs to inject insulin. Type 2 diabetes is not  
9 insulin dependent, and you wouldn't be injecting insulin. I'm  
10 not sure if it's Type 1 or Type 2 and if it is requiring -- if  
11 he is insulin dependent or not.

12                   Counsel, do you know?

13                   **MR. WOODSON:** I do know that he is insulin dependent.  
14 Mr. Green can speak directly to that. Based on the medical  
15 records that I've produced to the Court, it appears that he is,  
16 in fact, receiving injections at least twice a day.

17                   **THE COURT:** But what's your understanding?

18                   Mr. Green, are you Type 1 or Type 2?

19                   **THE DEFENDANT:** It's Type 1 diabetes, but I guess they  
20 told me it's going into Type 2 form, but I am insulin  
21 dependent, so I would say I'm Type 1. I know that for a fact.  
22 I don't know where the Type 2 came in, but as far as I know for  
23 a fact, I am insulin dependent. I can say that.

24                   **THE COURT:** Yeah. Okay.

25                   So -- and then I read the -- well, I should say I read all

1 parties' sentencing memos, as well as the Probation Officer's  
2 memos, but I'm not sure I'm clear on what it is that  
3 Mr. Woodson is recommending in terms of home confinement.

4 You're suggesting that he would be on lockdown for three  
5 months and then on -- and then it says something about after  
6 four months, he would remain on electronic monitoring and would  
7 be permitted to leave for work and provide childcare.

8 Did someone just sign in or out?

9 **UNIDENTIFIED SPEAKER:** Yes, I'm here for -- to -- my  
10 has fiancé a court date. I was given this number to call in.

11 **THE COURT:** Right. Who is your fiancé?

12 **UNIDENTIFIED SPEAKER:** Rafael Mendez.

13 **THE COURT:** You can turn your phone on mute and wait  
14 because we're on another case right now.

15 **UNIDENTIFIED SPEAKER:** Absolutely.

16 **THE COURT:** No problem.

17 So what is it you're suggesting, Mr. Woodson? He first  
18 spend three months, leaving only for medical appointments, and  
19 then following that, go onto electronic monitoring and spend  
20 four months during which he would be allowed to work, and then  
21 later it says during the six-month period, he would be subject  
22 to a curfew. So is that the three months plus the four months,  
23 which actually I guess is seven months? Or is that to be seven  
24 months followed by another six months?

25 I mean, I'm not necessarily going to do what you ask, but

1 I at least want to know what you are suggesting.

2 **MR. WOODSON:** What I'm suggesting -- excuse me.

3 Charles Woodson.

4 I understand and apologize for the confusion, Your Honor.

5 My intent was three months of home confinement where he's just  
6 on lockdown, and then thereafter, he would be allowed to --  
7 after the three months, he would be allowed to leave  
8 specific -- just for work, legal. So that would be the next  
9 four months.

10 And then my intention was that he would still be on some  
11 type of curfew for an additional six months thereafter, but I  
12 wanted to give the Court and give Mr. Green access to just  
13 start getting services, specifically for -- possibly for mental  
14 health and maybe some other types of counseling, but I wanted  
15 the -- essentially I would want some type of transition from  
16 complete confinement to freedom, but under the direction of  
17 what would essentially be his probation officer.

18 **THE COURT:** So what you are really talking about is  
19 three months plus four months plus six months?

20 **MR. WOODSON:** Correct.

21 **THE COURT:** Which would be 13 months. So that's your  
22 proposal?

23 **MR. WOODSON:** Correct.

24 **THE COURT:** You also mentioned the possibility of an  
25 RRC or residential reentry center, also known as a halfway

1 house. That is another possibility, although we're having a  
2 lot of trouble with bed space in our halfway houses.

3 And I don't know, if Ms. Mar, you're conversant with the  
4 current status of the bed state at the RRCs?

5 **THE PROBATION OFFICER:** I am not, but I know that it's  
6 just dependent on whether or not there is any active cases of  
7 COVID-19 as well, but I could find out.

8 **THE COURT:** Well, before we had a case in Oakland so  
9 they shut that down. San Francisco was still open, but there  
10 weren't any beds there, but that may not be the case at the  
11 moment.

12 But, anyway, let me turn then to Ms. Paisner or Mr. Meyer,  
13 whoever wants to address this. Ordinarily perhaps the  
14 Sentencing Guideline range would be appropriate, but given the  
15 state of the jails and the prisons with regard to COVID-19 and  
16 the fact that diabetes is a comorbidity and leads to, I think,  
17 both an increased likelihood of becoming infected as well as  
18 increased likelihood of bad outcomes if infected and given the  
19 rates of infection that we're seeing at the Bureau of Prisons  
20 facilities and the rates of compassionate release motions we're  
21 receiving seeking release from people who are already in those  
22 prisons that have diabetes and other comorbidities, you didn't  
23 mention that problem in your memos, and I wondered what your  
24 thought was about that.

25 **MS. PAISNER:** Your Honor, this is Leah Paisner

1 speaking.

2 To address that simply, as of today with respect to  
3 Santa Rita, there are only two positive cases of COVID-19. I'm  
4 sure Your Honor has seen multiple compassionate release motions  
5 at this point laying out the exact procedure Santa Rita is  
6 taking to -- as well as BOP facilities are taking to prevent  
7 the spread and mitigate the risk posed by COVID-19.

8 The Government does not dispute that Type 2 -- Type 1  
9 diabetes could be a comorbidity. At the same time by the  
10 Defendant's own admission, he is receiving regular care that is  
11 appropriate for his condition in custody. And given that the  
12 procedures in place have been substantially -- has  
13 substantially mitigated the risk and are sufficient to both  
14 protecting the Defendant's health while at the same time  
15 reducing his risk, I don't believe that should be a grounds for  
16 a lower sentence in this case.

17 **THE COURT:** Okay. Well, those are my questions. I'm  
18 going to hear from the Defense attorney and the Defendant as  
19 well, but as long as you're speaking, Ms. Paisner, is there  
20 anything you would like to add with respect to your sentencing  
21 recommendation?

22 **MS. PAISNER:** No, Your Honor, except that in this  
23 particular case, as the Court has seen, the Defendant  
24 recidivised approximately a year and two months after he was  
25 released from custody following his conviction for the

1 conspiracy to commit armed robbery of a stash house. At the  
2 time of his arrest, he was in a position to endanger the  
3 public. He was intoxicated at the wheel of a vehicle which he  
4 left in park but with the engine still running, and he had a  
5 loaded firearm in the vehicle next to him within reach.

6 The fact that the defendant recidived so quickly after  
7 his release indicates to the Government that a sentence of  
8 time-served and home confinement with indeterminate conditions  
9 about whether he be on location monitoring or not simply is not  
10 sufficient to reduce his danger to the community and set him on  
11 the path towards rehabilitation once he gets released.

12 **THE COURT:** All right.

13 Ms. Mar, I know you are recommending a custodial sentence,  
14 but just hypothetically speaking, if Mr. Green were to be in  
15 home confinement, what would be your recommendation as to the  
16 safest and most rehabilitative conditions that would be  
17 imposed?

18 You've heard what the Defense attorney recommended. I  
19 don't know if you -- don't mean to put you on the spot since  
20 this wasn't part of your recommendation, but if you have any  
21 thoughts on the progression that he is proposing or what you  
22 would propose, I would be interested to hear.

23 **THE PROBATION OFFICER:** Actually, I think that the  
24 proposition made by the Defense counsel sounds appropriate.  
25 You know, a period of home detention and then gradually moving

1 over to increased ability to go out and receive services would  
2 be sufficient.

3                   **THE COURT:** Did you mention -- had you inspected the  
4 place where he had been living most recently? The memo doesn't  
5 say where it was, so if you don't know, we'll ask Mr. Woodson  
6 to tell us, but if you're familiar with his most recent  
7 approved residence, could you tell us about it?

8                   **THE PROBATION OFFICER:** I do not have his most recent  
9 approved residence. I know the last place he lived was with  
10 his grandmother in Oakland, but I think the last time he wanted  
11 to live with his girlfriend. That was my understanding.

12                   **THE COURT:** Okay.

13                   Well, let me turn to Mr. Woodson. If you would first tell  
14 me what home detention locale you had in mind and then  
15 anything else you would like to address with respect to the  
16 sentence.

17                   **MR. WOODSON:** So I was thinking that -- thank you,  
18 Your Honor.

19                   I was thinking that he would go back to residing where he  
20 was residing when he -- this current -- when this case came up,  
21 and that's with his grandmother, and I believe that that was --  
22 that location had been inspected and was approved, at least  
23 back last year when he was living there. So that would be my  
24 proposal, that he live there -- he would reside there.

25                   I believe his grandmother is on the line.

1           The other thing I wanted to -- I just kind of wanted to  
2 give an overview in terms of reminding the Court that -- well,  
3 the Court doesn't need to be reminded. Mr. Green has come a  
4 long way from the individual that came before you back in 2012,  
5 and Mr. Green seems to, while he -- when he was out of custody  
6 for the 12 months plus the time in his halfway house, we're not  
7 seeing him using substances anymore, which was a big deal back  
8 in 2012, 2013. It appears like -- that he's actively turned  
9 the corner on illicit substance abuse issues, which is  
10 extremely important, and I think it definitely shows growth.

11           The other thing is that his employment -- he was employed  
12 once he was released while he was in the halfway house and up  
13 until the time of his incarceration, which is a huge change for  
14 the individual who came before you back in 2012 with basically  
15 no real work record. We see Mr. Green, after being released,  
16 he took to work and he was working very hard. And he did  
17 sustain a serious injury, losing part of his finger. Given his  
18 diabetic condition, recovery is a little more difficult and  
19 complicated just due to issues with healing -- the healing  
20 process, as Mr. Green had explained to me.

21           And so I think generally speaking, we're seeing somebody  
22 with a lot of -- with growth and I think continued growth under  
23 some type of guidance. I note that the pathways with the  
24 counseling, I think it was extremely important for him, and I  
25 think -- I really believe that, you know, for him receiving

1       those type of services to work through some of the issues that  
2       he has and some of the issues that he's gone through are very  
3       important.

4           I would note one thing of concern that became apparent to  
5       me during our interview with Probation was that he -- I didn't  
6       realize he had been shot twice on two separate occasions and  
7       any type of -- you know, the injuries that he sustained, the  
8       mental issues that revolve around it, his concerns for safety  
9       to the extent that he had tried to move out of the Northern  
10      District and move back to Alabama where he was living as a high  
11      school student, and him feeling dejected because Probation had  
12      denied his request, albeit we're not entirely sure why it was  
13      rejected. But the point is that Mr. Green was trying to move  
14      in a direction where he would feel safer and where he could  
15      continue to work, grow, build his relationship with his  
16      children which from the record -- the letters that I received,  
17      it shows that he's a very active father regardless of his --  
18      the relationship with his -- with the children's mothers, he's  
19      clearly engaged, and he clearly spends a lot of his time  
20      working on that.

21           I think Mr. Green at this point in time, in addition to  
22      the -- you know, the pandemic that's going on, I don't think  
23      this request would have been made -- this wouldn't even be a  
24      reasonable request six months ago, but given the current  
25      conditions and current climate of the country and the globe, I

1 really believe that placing him on home confinement with  
2 stringent conditions followed by -- that are to be eased and  
3 while they're being eased in terms of the confinement  
4 conditions, that he participate in mental health and -- and  
5 counseling related to just dealing and processing some of the  
6 issues that he is carrying.

7 But I do -- I would like to leave it -- Mr. Green with a  
8 little bit of time, just so that he can give the Court a little  
9 bit of a better picture about who he is today as opposed to who  
10 he was when he first came before the Court.

11 **THE COURT:** All right. May I ask if Mr. Green's  
12 grandmother is on the line?

13 (No Response.)

14 **THE COURT:** I guess not.

15 **UNIDENTIFIED SPEAKER:** Yes.

16 **THE COURT:** Are you there?

17 **UNIDENTIFIED SPEAKER:** Yes.

18 **UNIDENTIFIED SPEAKER:** Yes. She is on the line.

19 **THE COURT:** Your name again, ma'am? Well, it sounds  
20 like we don't have too good of a connection.

21 **MS. GREEN:** Ma'am, hello? Can you hear -- I'm Lance  
22 Green's grandmother.

23 **THE COURT:** What is your name, ma'am?

24 **MS. GREEN:** Katherine Green.

25 **THE COURT:** Katherine Green. And you are willing at

1 some point to let Mr. Green come back and live with you?

2 **MS. GREEN:** Yes, I am.

3 **THE COURT:** Okay. You can go ahead and mute your  
4 phone again. Sorry.

5 Mr. Green, Sr., are you still there on the line?

6 **MR. GREEN, SR.:** Yes.

7 **THE COURT:** The attorney says that you would be  
8 willing at some point -- Mr. Green was living under electronic  
9 monitoring or in home confinement -- that you would be willing  
10 to take him to his medical appointments and supervise him?

11 **MR. GREEN, SR.:** Yes.

12 **THE COURT:** Okay.

13 And, Mr. Green, Jr., is there anything you would like to  
14 say before sentence is imposed?

15 **THE DEFENDANT:** Your Honor, I would just like to say  
16 for this situation, I don't -- I don't have any excuse for the  
17 mistake I made. It was a selfish mistake. It's truly an  
18 embarrassment; an embarrassment to be here again in front of  
19 you and letting down my family and my support system, which I  
20 built up. It's truly -- the situation, you know, it's a  
21 letdown and a disappointment for my kids, for all that, you  
22 know, I've accumulated over time.

23 You know, the six months plus the 14 months I was out I  
24 worked two jobs at some times, being there for my grandmother  
25 and building a relationship with my kids, building a

1 relationship with my parents, and being there for family.

2 So the mistake that I made, it just truly was not the best  
3 one, but on the road to being better and being great, you know,  
4 I made a real mistake, and I think that continuing to work and  
5 be there with my family and still depending on my support  
6 system, you know, will help. And I'm hoping that we can find  
7 an alternative to the situation to continue me on the correct  
8 path.

9 Thank you for your time.

10 **THE COURT:** All right.

11 Ms. Paisner, did you want to respond to any of this?

12 **MS. PAISNER:** Your Honor, the one thing I wanted to  
13 add to this was that the plea agreement as currently filed  
14 contains a Section 3582 waiver. As the Court knows, the U.S.  
15 Attorney's Office is no longer including that provision in the  
16 agreement, so I think it would be appropriate to request the  
17 Court to strike that line from the plea agreement itself.

18 **THE COURT:** Oh, okay. Good. Thank you for raising  
19 that. I'm not sure how we can strike things in electronic  
20 format. Maybe we better get -- get you to file a revised plea  
21 agreement, and it might take a long time to get everyone to  
22 sign it, but at least let's have it in writing in the  
23 electronic file, if we can't actually edit it. In the olden  
24 days, we used to strike things out and put initials on it, but  
25 we can't do that anymore.

1                   **MS. PAISNER:** Understood.

2                   **THE COURT:** I'm also having a little trouble finding a  
3 document from Probation that sets out the conditions of  
4 supervised release that you would be recommending. Can you  
5 tell me what docket number or what date of report or something  
6 so I might be able find that? Ms. Mar?

7                   I've got a revised probation report from June 5th, a  
8 presentence report in the 2020 case, and then I've got another  
9 presentence report. Probation office violation memo in the  
10 2012 case. No?

11                  Are you still there, Ms. Mar?

12                  (No response.)

13                  **THE COURT:** Ms. Mar?

14                  **MR. MEYER:** Sorry, Your Honor. This is Stephen Meyer.

15                  At the end of the revised PSR, in the sentencing  
16 recommendation section, there is a section after that that has  
17 the conditions -- recommended conditions of supervised release.

18                  **THE COURT:** The June 5th document?

19                  **MR. MEYER:** Yes, Your Honor.

20                  **THE COURT:** Oh, good. Okay.

21                  Did we lose Ms. Mar, though?

22                  (No response.)

23                  **THE PROBATION OFFICER:** Hi. This is Karen Mar for  
24 Probation.

25                  **THE COURT:** You're still there.

1                   **THE PROBATION OFFICER:** I got disconnected.

2                   **THE COURT:** Oh, but you're back?

3                   **THE PROBATION OFFICER:** Yes, I'm back.

4                   **THE COURT:** Okay. Well, what I'm going to do -- and  
5 it really is largely because of the coronavirus and the risk of  
6 someone in Mr. Green's medical condition. So I'm going to give  
7 a much lower sentence than I otherwise would have.

8                   And, Mr. Green, you're getting a break on this, and I hope  
9 that you won't take advantage of that, and I hope I won't see  
10 you back again and find out that I was wrong.

11                  What I am going to do, though, is I am going to impose a  
12 sentence of supervised release with conditions of, let's say,  
13 nine months in a residential reentry center if there is one  
14 that is available that can accommodate Mr. Green's medical  
15 issues. And we'll do that at the discretion of the Probation  
16 Office.

17                  Ms. Mar, if you could find out what's available and what  
18 the conditions would be there in terms of medical care and  
19 social distancing and so on and make a decision whether that's  
20 feasible. I think it might well not be, and I'm going to have  
21 a backup home detention plan in case it isn't, and that will be  
22 essentially what counsel recommends, which is to say the first  
23 three months in complete lockdown, other than medical  
24 appointments, which could include mental health counseling, by  
25 the way, and drug counseling, if that's necessary.

1           And I'll take Mr. Green, Sr., up on his offer to supervise  
2 Mr. Green and be with him and make sure that he's going to  
3 medical appointments during that first three-month period and  
4 isn't going anywhere else on the way there or on the way back.

5           After the first three months, then Mr. Green would be  
6 allowed to seek and obtain employment and be released from home  
7 detention for purposes of the medical appointments as well as  
8 for work if he's able to obtain work or for applications for  
9 work.

10          But, Mr. Green, you need to keep your Probation Officer  
11 apprised of all of your appointments and work schedules so that  
12 if you happen to be found outside the house at some point, your  
13 Probation Officer would have known in advance where you were,  
14 that you had an appointment for an interview or that you had a  
15 work schedule or whatever.

16          And then for six remaining months after that, you'll still  
17 be subject to curfew of work, medical appointments, legal  
18 appointments, I guess family visits, and other approved  
19 activities that Probation is informed of in advance and agrees  
20 to.

21          The supervised release will be for -- I've forgotten now  
22 what was recommended.

23           **MS. PAISNER:** Your Honor, it was three years  
24 supervised release. This is Leah Paisner.

25           **THE COURT:** Thank you, Ms. Paisner.

1           So three years of supervised release. The first condition  
2 will be either the RRC or the home detention at the direction  
3 of Probation. The additional conditions will be the same  
4 conditions as in the previous case plus -- well, I guess --  
5 what? We owe Mr. Green a special assessment from the last  
6 case?

7           **MR. WOODSON:** Yes, Your Honor.

8           **THE COURT:** He already paid, Mr. Woodson? So we will  
9 just apply that to the new case, shall we?

10           **MR. WOODSON:** I think that's a good idea.

11           **THE COURT:** I don't think we'll ever see it again any  
12 other way.

13           Then we will have a condition of mental health treatment  
14 as directed by Probation; a search of residence, vehicle, etc.,  
15 by any law enforcement officer with or without any probable  
16 cause or suspicion or reasonable suspicion; testing and  
17 treatment for alcohol or drug abuse as directed by Probation;  
18 abstain from alcoholic beverages.

19           The firearm and ammunition are to be forfeited.

20           I understand you have an explanation for why you felt you  
21 needed to have a gun, and maybe that explanation still applies.  
22 Maybe you live in a dangerous area, maybe you have Post  
23 Traumatic Stress Disorder from previous gunshots, but you can't  
24 have a gun regardless of the reasons for it. You can't have  
25 one. And if you do, somebody's going to get hurt, and at the

1 very least, there won't be anything I can do about a prudent  
2 sentence at that point.

3 As far as moving someplace else, the only way you're going  
4 to move someplace else is if you are in good standing on  
5 supervised release, so if you still have that in mind, what  
6 you'd need to do is finish the RRC program, finish the home  
7 detention sessions, be in good standing for some length of time  
8 because another jurisdiction does not have to take you and they  
9 won't take you if they think there is going to be trouble for  
10 them. So that's -- I don't know what happened last time, but  
11 if that's part of your plan this time, you need to show some  
12 substantial success on supervised release before they're going  
13 to consider taking you, and maybe you should do that. I don't  
14 know.

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** Did we have -- let's see. Did we have --  
17 no. It was just the single count of the supervised release  
18 violation. There is nothing that needs to be dismissed?

19 **MS. PAISNER:** No, Your Honor.

20 And just to clarify, Your Honor, for the record, you  
21 will -- in case I missed it, the Court is agreeing with  
22 Probation's Guideline range calculation but is sentencing the  
23 Defendant to essentially a downward departure based on his Type  
24 1 -- his proffer regarding Type 1 diabetes and the risk at BOP  
25 and Santa Rita facilities?

1                   **THE COURT:** Yes. Thank you. All that is true.

2                   The Guideline calculations for the new offense and for the  
3 supervised release violation -- I don't know if I stated them  
4 before, but the ones that Probation laid out I agree with and  
5 don't seem to be disputed.

6                   And the reason for the downward departure is as, you say,  
7 the -- and as I said earlier -- the coronavirus pandemic as  
8 well as the particular susceptibility of Mr. Green because of  
9 his diabetes condition and the current conditions at Santa  
10 Rita, which you say have improved over the past times. I hope  
11 they have and I hope they continue to, but it's still a  
12 problem.

13                  And what's more, the Bureau of Prisons' prisons to which  
14 Mr. Green would be transferred with a sentence of that length,  
15 many of them also have serious problems with the infection and  
16 with the ability to keep the sort of conditions that are  
17 necessary to prevent the spread. There is problems at Terminal  
18 Island, there is problems at Lompoc. And for those reasons, as  
19 well as the support that Mr. Green provided in his sentencing  
20 memorandum of family members and community members, which also  
21 plays into the decision that a downward departure is  
22 appropriate.

23                  **UNIDENTIFIED SPEAKER:** I'm sorry, Judge. For the 2012  
24 case, Charges 2 and 3 need to be dismissed.

25                  **THE COURT:** Okay.

1                   **UNIDENTIFIED SPEAKER:** This is Eric.

2                   **THE COURT:** In which case now?

3                   **UNIDENTIFIED SPEAKER:** In the 2012 case, 12-407,  
4 supervised release.

5                   **MS. PAISNER:** Your Honor, I don't believe you formally  
6 sentenced the Defendant on the supervised release violations  
7 yet. It's my -- clarify me if I'm wrong, but I believe -- it's  
8 my understanding that you were going to proceed to the  
9 disposition on the Form 12 after sentencing, and then the  
10 Government would move to dismiss those charges.

11                  **THE COURT:** Oh, okay. So those are in the new  
12 supervised release charges?

13                  **MS. PAISNER:** Yes, Your Honor.

14                  **THE COURT:** There is only one set. Okay. Yeah.

15                  With respect to the supervised release charge, if I didn't  
16 say so before, it's a Grade B violation with a Criminal History  
17 of IV, Guideline range of 12 to 18 months. The Government  
18 recommends 12 months concurrent with the other sentence, and --  
19 but I'm going to impose the same sentence on the supervised  
20 release violation as I did on the new offense, which is to say  
21 supervised release under the conditions that were specified,  
22 and I'll dismiss counts -- what was it? One and two without  
23 prejudice --

24                  **MS. PAISNER:** Two and three, Your Honor. To  
25 clarify -- I apologize. So it's a sentence of time served, but

1 will there be a tail of supervision to run concurrently with  
2 the new term of supervision?

3 **THE COURT:** Yes. Yes.

4 **MS. PAISNER:** Or is -- okay.

5 **THE COURT:** Yes. I don't know how much more is left  
6 on it.

7 **MS. PAISNER:** I believe a significant amount is since  
8 this is his first revocation since he was only released from  
9 custody.

10 So he had a 36-month term imposed previously, and someone  
11 can correct me if I'm wrong, but I believe he was remanded to  
12 custody on November 12th, so that is approximately seven months  
13 custody, so there should be 29 months supervision to follow.

14 **THE COURT:** Okay. So I'll impose that to run  
15 concurrently with the supervised release in the new case and  
16 under the same terms of supervised release as I mentioned  
17 earlier.

18 Okay. Anything else, Ms. Paisner?

19 **MS. PAISNER:** Your Honor, I believe that's all from  
20 the Government at this time.

21 **THE COURT:** Ms. Mar, have I forgotten anything?

22 **THE PROBATION OFFICER:** No, Your Honor.

23 What about the fine? It will be waived?

24 **THE COURT:** Yes. I will impose no fine due to a lack  
25 of ability to pay a fine.

1                   **THE PROBATION OFFICER:** Okay. Thank you.

2                   **THE COURT:** Mr. Woodson, is there anything else?

3                   **MR. WOODSON:** I don't believe so, Your Honor.

4                   **THE COURT:** Okay. So we'll be issuing a Judgment and  
5 Commitment Order which will provide for release.

6                   Ms. Mar, if you could check as soon as you can about an  
7 RRC placement and let Mr. Green know if there is one, and if  
8 not, that he should proceed directly to his grandmother's  
9 house. And I'm hoping perhaps that Mr. Green, Sr., can make  
10 sure that he's -- that you find out when he's released from  
11 Santa Rita and get him transported either to the RRC, if they  
12 have a placement, or to his grandmother's house.

13                  Can you do that, Mr. Green?

14                  **MR. GREEN, SR.:** Yes. I sure can, as long as someone  
15 lets me know.

16                  **THE COURT:** Yes. Get in touch with Ms. Mar, the  
17 Probation Officer, and then she can keep you up to date on  
18 whether he's going to the RRC or to his grandmother's house and  
19 what the release date is so that he can get there without  
20 having any difficulties.

21                  **MR. GREEN, SR.:** Can she give me a phone number now  
22 that I can reach her?

23                  **THE PROBATION OFFICER:** I will call you. I believe I  
24 have your number.

25                  **MR. GREEN, SR.:** (510) 472-1181.

1                   **THE PROBATION OFFICER:** Okay. I will give you a call  
2 after this hearing.

3                   **MR. GREEN, SR.:** Thank you.

4                   **THE COURT:** Thank you, everyone. That will conclude  
5 this matter.

6                   (Proceedings adjourned at 2:16 p.m.)

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3 CERTIFICATE OF REPORTER

4 I certify that the foregoing is a correct transcript  
5 from the record of proceedings in the above-entitled matter.

6

7 DATE: Tuesday, September 29, 2020

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9 *Pamela Batalo Hebel*

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Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR  
U.S. Court Reporter

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